LEIN TIAM HOCK

v.

ARUMUGAM KANDASAMY

HIGH COURT MALAYA, MELAKA
SURIYADI HALIM OMAR J
[CIVIL APPEAL NO: 12-13 OF 1998]
16 JUNE 1999

CIVIL PROCEDURE: *Appeal - Appeal from subordinate courts to High Court - Courts of Judicature Act 1964, s. 28 - Amount in dispute or the value of the subject-matter - RM10,000 - Whether refers to claimed sum or judgment sum*

WORDS & PHRASES: *"amount in dispute or the value of the subject-matter" - Courts of Judicature Act 1964, s. 28 - Whether refers to claimed sum or judgment sum*

The plaintiff who had brought a running down action against the defendant for damages amounting to RM27,000 was awarded RM9,150 by the Sessions Court. The defendant appealed against both liability and quantum, and at the outset of the hearing before the High Court the plaintiff raised the preliminary objection that the appeal was incompetent by virtue of s. 28 of the Courts of Judicature Act 1964 ('the CJA') as the amount in dispute or the value of the subject-matter was not more than RM10,000. The issue which arose for decision was whether "the amount in dispute or the value of the subject-matter" in s. 28 of the CJA referred to the plaintiff's claim of RM27,000 or to the judgment sum of RM9,150.

Held:

[1] "The amount in dispute or the value of the subject-matter" in s. 28 of the CJA must relate to the decision of a subordinate court and not to the sum claimed by a plaintiff or the combined sum of a claim and a counterclaim. Hence, the amount in dispute or the value of the subject-matter in the instant appeal was the judgment sum of RM9,150. The defendant's instant appeal was, therefore, incompetent.

[Plaintiff's preliminary objection upheld; defendant's appeal struck out.]

Case(s) referred to:
Allan & Ors v. Pratt [1888] Vol XIII App Cases 780 ***(refd)***
Amer Mohideen Dawood v. Sneh Bhar Ter Binder Singh [1996] 2 CLJ 955 ***(refd)***
Brett v. Thrower [1945] 2 All ER 284 ***(dist)***
Chan Kee Beng v. Ramasamy Naidu [1939] 8 MLJ (JR) 113 ***(dist)***
Manohary Teresa & Anor v. Tan Ah Lek [1996] 1 CLJ 149 ***(dist)***
Meghi Lakhamshi & Brothers v. Furniture Workshop [1954] App Cases 81 ***(refd)***
Mohamad Safuan Wasidin & Anor v. Mohd Ridhuan Ahmad [1994] 2 MLJ 187 ***(refd)***
Smith v. Gill [1896] 2 QB 166 ***(dist)***
Studham v. Stanbridge [1895] 1 QB 870 ***(refd)***
Sulaiman Mohamad v. Malayan Banking Bhd [1992] 2 MLJ 116 ***(refd)***
Tan Weng Chiang v. PP [1992] 2 MLJ 625 ***(refd)***
Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor [1997] 2 CLJ 68 ***(dist)***
Zain Azahari Zainal Abidin lwn. Wearne Brothers (1983) Sdn Bhd [1997] 2 CLJ 594 ***(refd)***

Legislation referred to:
Courts Enactment 1918, s. 17
Courts of Judicature Act 1964, ss. 28, 29, 68(1)(a)

County Courts Act 1934 [UK], ss. 105, 120

For the applicant - Raghbir Singh; M/s Raghbir Singh Gill & Co
For the respondent - Azad Bashir; M/s Bashir & Co

Reported by Gan Peng Chiang

JUDGMENT

Suriyadi Halim Omar J:

This is a running-down case pursuant to a judgment in favour of the plaintiff for the sum of RM9,150, emanating from the Sessions Court. The original claim was over RM27,000. Being dissatisfied with that decision, only the defendant (hereinafter referred to as "the appellant") filed a Notice of Appeal. Down below, the court had adjudged the plaintiff 2/3 liable whilst the defendant 1/3. The Notice of Appeal reads thus:

> AMBIL PERHATIAN bahawa Lein Tiam Hock, perayu yang dinamakan di atas tidak berpuas hati dengan keputusan Hakim Mahkamah Sesyen Tuan Rajendran Nayagam yang diberikan pada 6 haribulan Mac, 1998 dan dengan ini merayu kepada Mahkamah Tinggi terhadap keseluruhan keputusan tersebut terhadap isu liabiliti dan kuantum.

TRANSLATION

> TAKE NOTE that Lein Tiam Hock, the abovenamed appellant is not satisfied with the decision of the Sessions Court judge Tuan Rajendran Nayagam delivered on March 6, 1998 and therefore appeals to the High Court on the judgment on liability and quantum.

Before the case commenced, the plaintiff (hereinafter referred to as "the respondent"), posed a preliminary objection on the premise that no appeal should be entertained due to legal impediments. The reason supplied was that, the amount in dispute or the value of the subject-matter at hand did not exceed RM10,000, nor was there any question of law to be resolved by the court. The foundation of this objection is s. 28 of the Courts of Judicature Act 1964, and it reads:

> (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.

Approaching this provision from a different perspective, an appeal to the High Court, in brief, shall be entertained only if:

(i) a decision has been pronounced by a subordinate court;

(ii) that decision relates to a civil cause or matter; and

(iii) the amount in dispute or the value of the subject-matter is over RM10,000; or

(iv) there is a question of law to be resolved.

As gauged from the above Notice of Appeal, the matter under appeal was limited to the issue of liability and quantum. In the event I decide that the disputed amount, or value of the subject-matter is not over RM10,000, that notice procedurally is flawed. This is so as it is silent as to the question of law to be resolved (*Zain Azahari bin Zainal Abidin lwn. Wearne Brothers (1983) Sdn Bhd* [1997] 2 CLJ 594; [1997] 5 MLJ 39; *Sulaiman bin Mohamad v. Malayan Banking Bhd* [1992] 2 MLJ 116; *Mohamad Safuan bin Wasidin & Anor v. Mohd Ridhuan bin Ahmad (An Infant)* [1994] 2 MLJ 187). In open court, the liability issue was mercifully conceded to by the appellant, though not the quantum. The respondent submitted that as the adjudged sum was only RM9,150, an amount which did not exceed the RM10,000, the appeal was incompetent. The appellant on the other hand ventilated that the court should not view the judgment sum to be the disputed amount but the RM27,000, as claimed by the respondent. To resolve the supposed ambiguity of s. 28, I find it necessary to discuss s. 68 of the Courts of Judicature Act 1964 referred to by both parties. I also find it necessary to refer to relevant cases which may be traced all the way back to England. I begin with the case of *Smith v. Gill* [1896] 2 QB 166. The relevant provision under discussion there was s. 120 of the County Courts Act which provided that no right of appeal without leave was permitted if the debt or damage claimed did not exceed £20. As it were,

the above provision was related to matters "claimed". Factually, the sum claimed by the plaintiff was £3 11s and 3p. Eventhough this sum did not exceed the statutory £20, the appeal was proceeded with as the court took into consideration the sums counter-claimed by the defendant. By this course of action, the gross sum exceeded £20. In the case of *Brett v. Thrower* [1945] 2 All ER 284, the same approach was undertaken by MacKinnon LJ. The appeal was dismissed there as the combined claims of both parties did not exceed £20, as provided for under s. 105 of the County Courts Act 1934.

Nearer home, the earliest of cases available for my consideration is *Chan Kee Beng v. Ramasamy Naidu* [1939] 8 MLJ (JR) 113. In that case Mills J had to contend with s. 17 of the Courts Enactment 1918, which reads:

> No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) where the amount or value of the subject-matter of the suit is less than five hundred dollars.

Mills J when construing the above provision, read together with the facts before him, ruled that the determining factor was not the amount or value of the subject matter of the appeal, but the amount or value of the subject matter of the civil suit. Interestingly enough, the above provision, apart from the value of the subject-matter and the promulgation of the word "suit", had no substantial dissimilarity with s. 68 of the current Courts of Judicature Act. Progressing further, and after making the necessary comparisons, regretfully I found no similarity between the above s. 17 of the Courts Enactment 1918 and s. 28 of the Courts of Judicature Act 1964. On hindsight, if the phrase "of the suit" under the above s. 17 of the Enactment were absent, the view of Mills J would certainly be of tremendous assistance to me for purposes of my research.

Section 68 of the Courts of Judicature Act 1964, which did not escape the attention of the antagonists during the hearing reads:

> (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal ...

The Federal Court when discussing the above section in *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 2 CLJ 68, encountered no difficulty in concluding that the appeal at hand would still be allowed even if the judgment sum were less than RM100,000 (the sum at the material time

prior to the amendment). But this was dependant on a particular reason. Chong Siew Fai CJ (Sabah & Sarawak) at p. 72 supplied the reason. His Lordship said:

> In my view no leave of court was required for this particular appeal. Section 68(1)(a) of the Act used the phrase "amount or value of the subject-matter of the claim". The phrase must be read as a whole. In the instant case under appeal, the subject-matter is the road traffic accident and the claim of the 1st plaintiff/appellant is for an amount far in excess of RM100,000. That being so, the amount adjudged at the trial assumes little or no significance.

Another case which is relevant for consideration is the case of *Manohary Teresa & Anor v. Tan Ah Lek* [1996] 1 CLJ 149. In this case the defendant appellant, erronously thought that leave was required in the circumstances of the case, as the judgment sum was below RM250,000 (after amendment by Act A837). He thenceforth filed a motion for that purpose, and due to that time consuming act, time for his appeal expired. He thereafter applied for an extension of time. Again the Court of Appeal held that leave to appeal was not required inspite of the award being below RM250,000. And again the decision was based on the sum claimed rather than on the judgment sum. Since we are on the subject of "decision", it is worthwhile to note at the earliest of stages that that word is absent in s. 68(1)(a). Instead, it contains the word "claim". Adverting back to this case, in the ensuing judgment, His Lordship Mahadev Shankar JCA took time off to criticise the imprecise words of s. 68. On the pretext of the excusable mistake, an extension of time to file the appeal was allowed.

I am satisfied that the immediate five cases discussed above are inapplicable to the scenario as envisaged by s. 28, as they are easily distinguishable. This provision is plain and clear. To use the words of Mohamed Azmi SCJ in the case of *Tan Weng Chiang v. Public Prosecutor* [1992] 2 MLJ 625, at 630:

> Where the meaning of words in the statute is plain and unambiguous, judges should not invent fancy ambiguities.

Pursuing the tenets of interpretation, I am satisfied that the amount in dispute, or the subject-matter provided for under s. 28, must relate to the decision of the subordinate court, and not to any sum claimed either by the plaintiff or the combined sum of the claim and counter-claim submitted by the defendant, if any. Apart from attaching weight or significance to that term "decision", the provision of s. 28 must also be read as a whole. Indisputably, it is also beyond denial that the latter provision does not have the terms of "claim" or "suit", as promulgated in the material provisions discussed in the above cases. If Parliament had wanted to treat ss. 28 and 68(1)(a) of the Courts of Judicature Act 1964 in similar fashion, it certainly would not have hesitated to do so. Synchronization is no insurmountable obstacle for the Legislators.

Had it been the respondent (plaintiff in this case) who was unhappy with the judgment sum, and had filed a Notice of Appeal, he similarly would be subject to the same interpretation. If the judgment sum did not exceed RM10,000, then similarly his hypothetical appeal would be disallowed unless a question of law existed to be resolved by the High Court. To allude to the often quoted cliche, sauce for the goose is also sauce for the gander.

Conclusion

To qualify to appeal to the High Court an appellant thus must prove that:

(1) a decision has already been pronounced. A claim in a statement of claim yet to be adjudged, certainly does not qualify as a decision;

(2) if the appeal is pursuant to an amount, the amount in dispute or the subject-matter concerned must be valued at over RM10,000. Generally any dispute would require at least two opposing parties. A plaintiff will invariably claim the exact sum or a potentially larger sum than he could possibly claim. If an award is pronounced and no appeal is filed by that plaintiff, then in principle he has not been prejudiced by it. In real terms it also means that he has abandoned the original claim, thus making it a dead issue. The dissatisfied party in that hypothetical scenario, inevitably the defendant, believing that he has been unfairly or wrongly judged will, in the normal course of event file the necessary appeal. His act will be founded on the belief that he will be injured by that order, a predicament which may be alleviated or relieved by a successful appeal. In practical terms when an aggrieved party files an appeal he must be disputing the judgment sum awarded against him. Therefore, shorn of all the legal niceties, that judgment sum must be the amount in dispute (*Allan and Ors v. Pratt* [1888] Vol. XIII App. Cases 780; *Meghi Lakhamshi & Brothers v. Furniture Workshop* [1954] App. Cases 81; *Amer Mohideen Dawood v. Sneh Bhar w/o Ter Binder Singh* [1996] 2 CLJ 955; [1996] 2 MLJ 329).

To strengthen my contention that the amount in dispute or value of the subject-matter must relate to the award, and not that of the claim, some assistance may be garnered from s. 29 of the Courts of Judicature Act 1964. Under this provision all civil appeals from a subordinate court shall be by way of re-hearing. On the assumption that the disputed sum were to be the sum claimed by the plaintiff, then the defendant/appellant's interest may be highly prejudiced. This is so, as, the appeal court will necessarily have to consider the ceiling sum of RM27,000, as submitted in the statement of claim. No appellant/defendant would want that. Surely that was not his expectation when commencing the appeal. He must have had in mind a sum less than RM9,150, but surely not to be penalised by

an award that could potentially touch RM27,000. Such a scenario will inevitably dissuade any aggrieved party to file an appeal. On the other hand if the disputed sum or subject-matter were to be the amount awarded by the court, then in the event of a partial success, that judgment sum could proportionately be reduced. Even if the appeal were to be dismissed, his previous position will not turn for the worse, as he will not be penalised by having to pay more than that original award of RM9,150.

If I may be permitted to take a step further, not being a claimant, the appellant/defendant also does not possess the legal right of reverting to the original sum in the statement of claim. He just cannot freely borrow or clothe himself with the claim of the plaintiff as he is not the party in possession of that right of cause of action. Similarly he cannot impose that claimed sum on the respondent as he already is quite satisfied with the shrunken judgment sum;

(3) alternatively, the "subject-matter" under appeal is valued at over RM10,000. In the normal course of event, a subject-matter, which is a thing for consideration, will be in the like of a claim as against the other (as in the right of divorce, of ejectment, recovery of money or foreclosure). In this case the subject-matter is that RM9,150 assessed by the judge, as per the decision (*Studham v. Stanbridge* [1895] 1 QB 870). Even under this alternative situation the appeal fails.

I therefore allow the preliminary objection and strike out this appeal with costs for want of competency.